

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 503 of 1995

in

SPECIAL CIVIL APPLICATION No 2802 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SADI SATTAVAIS ANJANA PATIDAR YUVAK SANGH

Versus

STATE OF GUJARAT

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Appearance:

MR BN PATEL for Petitioner  
Mr.Y.V.Mehta, AGP for Respondent no.1.  
Mr.V.H.Patel, for Respondent no.2.

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 03/05/96

ORAL JUDGEMENT

Per C.K.Mehta J.

Learned counsel for the petitioner prays to delete respondent no.3 District Education Officer, Sabarkantha as no effective relief is claimed against him. Permission granted.

Admitted. Mr.Y.F.Mehta, AGP appears for the respondent no.1 and waives service of admission of the appeal. Mr. V.H.Patel, appears for the respondent no.2 and waives service of admission of appeal on behalf of respondent no.2.

In the facts and circumstances of the case, the matter is taken up to day for hearing.

This appeal is filed by the appellant, who is original petitioner in Spl.C.A.No.2802 of 1995 against an action of the Gujarat Secondary Education Board, Gandhinagar, respondent no.2 herein rejecting application for granting permission to open a school and confirmed by the State of Gujarat, respondent no.1 and also confirmed by the learned Single Judge in Special Civil Application No. 2802 of 1995 decided on April 7, 1995.

It appears that the appellant made an application to respondent no.2 Board for registration of the secondary school at Khedabrahma in the name of Shri Arbuda Vidyalaya, Khedabrahma. The respondent no.2 decided by an order dt. December 1, 1992 rejecting application filed by the appellant, inter alia, on the ground that the provisions of Regulation 9, (13) (i)and (ii)and (v) and (vi) have not been fulfilled. Relevant regulation reads as under:

"9. Procedure for registration of secondary schools by the Board.-

(1) xxxx

(13) The following shall be the standard requirements in respect of buildings, laboratory, library, furniture, equipment, stationery and other articles for conducting registered schools and equipment of a secondary school;

Provided that where the requirements cannot be complied with by any applicant for registration of a school the applicant may specify in full details special circumstances reasons or local conditions on account of which such deficiency in or deviation from the standard requirements may be condoned.

(i) the premises should be sufficiently

healthy well lighted and ventilated, with due provision for the safety of the pupils and with separate, satisfactory and adequate sanitary arrangements for girls in the case of a school providing for co-education;

- (ii) the rooms in which classes are held should provide requisite accommodation for all the students actually admitted in each class, at the rate of not less than 8 sq.ft. per student exclusive of the space required for a table and a chair for a teacher, a teaching platform, black-board and any other equipment required for teaching.
- (v) adequate and suitable laboratory, library, furniture, equipment, stationery and other articles for conducting the school shall be provided.
- (vi) in a registered school where technical science and vocational subjects are taught, well equipped workshop, laboratory and equipment for practical work shall be provided and the number of students assigned to a single teacher for practical work at any one time shall not exceed the sanctioned strength off one division."

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Thus the application of the appellant was rejected on the ground that there was no sufficient accommodation and, there was no library room as well as other accommodation.

Being aggrieved by the said order passed by respondent no.2 Board, the appellant preferred an appeal before the State Government. The State Government did not apply its mind to the facts and circumstances of the case and there is no ground recorded by the Board regarding the grounds mentioned byy the Board in its order and on altogether a different new ground the appeal was dismissed and the registration was not granted observing that there was no need of a new secondary school in the area.

Mr. B.N.Patel, learned counsel for the appellant, in our opinion, rightly contended that this was totally a new ground for which no show cause notice was issued no explanation was sought and no opportunity was afforded to the appellant. The appellant came to know about that ground only when the appellant received the order. Looking to the order also it clearly appears

that it was totally a new ground on which registration was not granted. Regarding two grounds which have been put forward by the Board, the appellate authority has not stated that both the grounds were in existence and, therefore, the order could be approved and/or uphold on those grounds. In our opinion, therefore, the appeal is required to be allowed and is accordingly allowed. The order passed by the learned Single Judge as well as the Appellate Authority i.e. State Government is quashed and set aside. The appellate authority will now again hear the matter and decide the same afresh in accordance with law after affording opportunity of hearing to the appellant. The appeal is accordingly allowed with no order as to cost.

Since the question pertains to the registration of the school and the order passed by the Board is of December 1992, the appellate authority is directed to decide the appeal as expeditiously as possible preferably on or before 15th July 1996.

LPA is accordingly allowed.